

**Response of Illinois Power Company
to the Request for Comments
Concerning the Commission's Section 16-120(a) Competition Report to the
General Assembly**

November 12, 2002

Illinois Power Company (Illinois Power, IP or the Company) appreciates the opportunity to respond and to assist the Illinois Commerce Commission (Commission, ICC) in the preparation of its report to the General Assembly. Illinois Power Company hereby submits its responses to the Request for Comments published by the Illinois Commerce Commission on October 28, 2002. These Comments are intended to assist the Commission in its examination of the current status of the Illinois energy marketplace and in forming its report and recommendations to the General Assembly. Since the Illinois competitive market is a dynamic structure that changes over time, the Company reserves the right to change its position with respect to the issues addressed below in its comments to reflect changes in the market, legislation and regulation.

General questions and comments about competition issues

1. Please describe any barrier to entry or any element constraining participation in the provision of any of the services provided for under Article 16 of the Public Utilities Act. Can and should these barriers be removed?

Response:

Under current energy market conditions it requires much more capital to conduct business than previously. As a result, many energy companies lack the requisite creditworthiness in order to effectively participate in the wholesale and retail markets. General lack of creditworthiness is therefore a barrier constraining participation in the market. Part of the reason many companies find themselves in this situation is attributable to an over supply of generation given current market demand that results in lower energy prices. This may be part of an economic cycle that requires no overt action by regulators to correct.

Another barrier to participation is the fact that none of the states neighboring Illinois have open and competitive markets. Thus, marketers must justify participation in Illinois on a stand-alone basis, without the help of potential synergies attributable to participating in other adjacent markets.

2. What are the impediments to the establishment of a competitive wholesale power and energy market in Illinois? Can and should these barriers be removed? What is the role of the State and the Commission in such an endeavor?

Response:

One impediment that Illinois Power experiences is that, although IP schedules transmission for customers, it is not permitted to pass along imbalance charges. As a result, customers are not seeing the full cost of providing transmission service.

3. What are the impediments to the establishment of a competitive retail market in Illinois? Will full retail competition be possible before these impediments are removed? Can and should these impediments be removed? What is the role of the State and the Commission in such an endeavor?

Response:

Recently held workshops have examined this issue. State Representative Phil Novak's recent series of workshops to address the Illinois retail competitive environment has provided a forum for utilities and other stakeholders to take steps towards addressing perceived imperfections in the current structure. Specifically, since the historical Market Value Index (MVI) methodology has been perceived by some market participants as an impediment to customers switching from bundled service to Retail Electric Supplier (RES) provided service, IP has filed to modify its current MVI calculation. These modifications include using forward market prices rather than historical data for establishing off-peak prices and also improving the quality of data used to calculate the MVI. Additionally, Illinois Power has filed proposed tariffs that would permit the calculation of CTCs for up to a three year period.

4. How could the Commission and/or General Assembly encourage competitive retail activity in the service areas that are not being served by Retail Electric Suppliers? Would such policies be appropriate?

Response:

Since the competitive structure of retail markets is evolving during the transition period direct action by the Commission or General Assembly is not needed.

5. Is competition for small-use electric customers feasible? How can the Commission and/or General Assembly encourage competitive activity in the residential electric market?

Response:

Initially it is important to distinguish between the mandatory transition period and the post-transition period. During the transition period residential customers primarily benefit from receiving deeply discounted service from the utility. Due to these discounts it is unlikely that these customers will see any additional benefit during the transition period. After the transition period, Illinois

Power believes that the market will develop new service offerings for these customers and enable them to benefit from restructuring.

6. Will retail competition be more likely after the current bundled rate freeze expires in 2007? If so, why?

Response:

Whether retail competition increases, decreases or remains the same during the post-transition period depends on how the Commission addresses several issues. First, how the Commission structures utility rates in the post-transition time period will determine utility rate levels. If rates are set artificially low, then Alternative Retail Electric Suppliers (ARES) will have little headroom against which to create products for customers. Also, how the Commission addresses the issue of provider of last resort will have a great deal to do with the amount of competition experienced in the post-transition period.

7. How should the State respond if competitive wholesale and retail markets do not develop in the wholesale and retail electric markets? What options would be appropriate to protect Illinois retail customers?

Response:

Failure of wholesale and retail markets to develop should be addressed when and if such events are incurred. If any remedial action were necessary, it should be tailored to address the issues at that time. It is important to point out that Illinois is still in the mandatory transition period and so it is difficult to tell how the competitive markets will develop.

8. How can we measure the intensity of competition in wholesale and retail electricity markets? How can we calculate the benefits from competition in wholesale and retail markets? How competitive are wholesale and retail markets according to these measures? What is the value of benefits from competition so far? What is the value of benefits from further increases in competitive activity?

Response:

One relevant measure of the effectiveness of competition is gauging how low prices are with respect to costs of production. That is, if prices are low, consumers are receiving benefits. Another way of measuring competitive benefits is the creation of new and innovative services offered to customers. Another measure could be the percentage of customers switching from bundled rates or Power Purchase Option (PPO) service to RES supply service as an indication whether competition is robust. However, there does not necessarily need to be many providers in order for customers to receive benefits from competition.

Questions and comments about specific competitive issues

9. Should the General Assembly make any changes to the transmission siting and certification provisions of the Public Utilities Act? If so, please describe the changes to Illinois' transmission siting and certification statutes that you would like to see.

Response:

Illinois Power does not believe the General Assembly should change the provisions within the Public Utilities Act concerning transmission siting and certification.

10. Should the ICC make any changes to the current transmission siting and certification practices, policies and procedures? If so, please describe the changes to the ICC's transmission siting and certification practices, policies and procedures that you would like to see.

Response:

Yes. The ICC should consider establishing some minimum length or floor for high voltage lines that requires regulatory approval. This would mean that a utility could construct a proposed high voltage line that was to be shorter than such minimum without the ICC requiring a certificate of public convenience and necessity. Perhaps a suitable minimum length could be 0.5 mile.

11. Should the General Assembly make any changes to the generating plant siting and certification provisions of the Public Utilities Act? If so, please describe the changes to Illinois' generating plant siting and certification statutes that you would like to see.

Response:

Not applicable to Illinois Power.

12. Should the General Assembly or the ICC adopt a policy for interconnection of large generating plants in Illinois? If so, please describe the policy you favor.

Response:

This issue will be resolved at the FERC.

13. Should the General Assembly or the ICC adopt a policy for interconnection of small generating plants in Illinois? If so, please describe the policy you favor.

Response:

This issue is transmission related and should be resolved at the FERC.

14. Should the General Assembly or the ICC modify its existing policy concerning backup rates for generating plants? If so, please describe the policy you favor.

Response:

Illinois Power does not believe back up rates for generating plants require modification at this time.

15. Should the General Assembly or the ICC modify its existing policy concerning self-generation or cogeneration? If so, please describe the policy you favor.

Response:

No modification is necessary at this time.

16. Should the General Assembly or the ICC take steps to promote increased opportunities for load response to price so as to improve demand elasticity? If so, please describe the steps you recommend.

Response:

Load shedding programs are currently available to promote customer participation and load response. No further action is needed at this time.

17. Should the General Assembly or the ICC take steps to promote divestiture of Illinois transmission facilities to entities not affiliated with Illinois generation owners? If so, please describe the steps you recommend.

Response:

Illinois Power believes encouragement of divestiture of transmission to owners independent of generation owners or load serving entities should be pursued through appropriate federal policy and supporting state policy. This is being done at the Federal Energy Regulatory Commission through Order 2000 and through its Standard Market Design (SMD) NOPR which create appropriate incentives for divestiture and independent ownership. Illinois Power believes the current PUA facilitates transmission divestiture and therefore no changes are needed, as evidenced by Illinois Power's announced plan to divest its transmission to Trans-Elect, Inc. an independent transmission company. Illinois Power does encourage the ICC to continue to participate in policy development at the FERC to encourage divestiture.

18. Should the General Assembly or the ICC take steps to promote load aggregation so as to increase opportunities for customers to participate in retail choice? If so, please describe the steps you recommend.

Response:

Currently, customers can aggregate load through organizations, like AARP. Load aggregation is currently administered by ARES registered to serve customers in the state of Illinois. Just like a utility that has elected to become an Integrated Distribution Company, neither the General Assembly nor the ICC should be engaged in marketing retail electric supply services. That activity should be left to ARES. Thus, any steps that promote load aggregation should be approached with caution.

Current legislation and tariff rules allow customers to choose between local utility default rates and delivery service. Load aggregation as a means to increase opportunities for customers to participate in retail choice may not necessarily lead to customers gaining the opportunity to benefit. A customer that switches to delivery service has likely considered several factors unique to their situation prior to the switch (e.g., opportunity to save, exposure to risk, term of offer, comfort with supplier, etc...). Any program that forces customers to switch to delivery service may be perceived by customers as a form of slamming, and should be avoided. Therefore, it is important that any aggregation program be implemented on an opt-in basis.

19. Should the General Assembly modify the Public Utilities Act to expand the ICC's merger review and approval authority? If so, please describe the modifications you recommend.

Response:

Illinois Power does not believe the Public Utilities Act warrants modification to expand the ICC's merger review and approval authority.

20. Should the General Assembly modify the ICC's ARES certification authority? If so, please describe the modifications you recommend.

Response:

Illinois Power does not believe that the Commission's ARES certification authority should be changed at this time.

21. Should the General Assembly modify the Public Utilities Act's provisions with respect to transition charges? If so, please describe the modifications you recommend.

Response:

Illinois Power believes the current provisions equitably balance the interests of utilities and customers, and provides for a smooth transition to the envisioned fully competitive marketplace at the conclusion of the mandatory transition period.

22. Should the ICC modify its practices, policies and procedures with respect to transition charges? If so, please describe the modifications you recommend.

Response:

Illinois Power believes the current practices, policies and procedures are appropriate.

23. Should the General Assembly modify the Public Utilities Act's provisions with respect to the market value index? If so, please describe the modifications you recommend.

Response:

Illinois Power is currently involved in Docket 02-0672 which will result in a new market value index process. During the pendency of this litigation, Illinois Power notes that it is too early to tell what modifications, if any, will result from the process.

24. Should the ICC modify its practices, policies and procedures with respect to the market value index? If so, please describe the modifications you recommend.

Response:

Illinois Power believes the ICC's current practices, policies and procedures are appropriate.

25. Should the General Assembly modify the Public Utilities Act's provisions with respect to reciprocity? If so, please describe the modifications you recommend.

Response:

Illinois Power does not believe that the PUA should be changed with respect to reciprocity.

26. Should the ICC modify its practices, policies and procedures with respect to reciprocity? If so, please describe the modifications you recommend.

Response:

27. Should the General Assembly modify the Public Utilities Act's provisions with respect to retail customer switching requirements? If so, please describe the modifications you recommend.

Response:

Illinois Power does not believe the Public Utilities Act requires modification with respect to retail customer switching requirements.

28. Are there any changes to the Public Utilities Act that you believe should be made in light of Federal Energy Regulatory Commission's ("FERC's") Order 2000 and FERC's Standard Market Design NOPR? Should Section 16-126 of the Act be updated? If so, please describe the changes you recommend.

Response:

The FERC's SMD proposal could require changes in current legislative or regulatory structures within Illinois. It would be inappropriate to make legislative changes at this time considering that the federal proposal is likely to evolve over time. At a future date it may be appropriate to make legislative changes to accommodate structures that are acceptable to state regulatory and business interests.

29. Are there any changes to the Public Utilities Act that you believe should be made in light of the Illinois electric utilities' Regional Transmission Operator choices? If so, please describe the changes you recommend.

Response:

No changes are necessary at this time.

30. Should the General Assembly modify the Public Utilities Act to provide the ICC with authority to require load-serving entities to maintain a resource adequacy level or reserve margin? If so, please describe the provisions you recommend.

Response:

Resource adequacy requirements are already set by reliability councils on a regional basis. To do otherwise could disadvantage Illinois with regard to other states.

31. Should MAIN alter its standards or practices in light of recent electric industry changes? If so, please explain how those standards or practices should be changed. Would the ICC or the General Assembly have any role in the MAIN changes you recommend? If so, describe that role. Should the ICC modify its current relationship with MAIN? If so, how?

Response:

No changes are necessary at this time.

32. What should Illinois' role be with respect to the North American Electric Standards Board ("NAESB")? Are Illinois statutory or regulatory changes needed to pursue that role?

Response:

33. Are you concerned with future generating fuel supply issues such as natural gas availability or natural gas transportation availability? If so, what should the General Assembly or ICC do to address these concerns?

Response:

Overall system reliability is always a cause for concern; however, Illinois Power believes it is a national issue.

34. Are you concerned with future generating fuel diversity issues? If so, what should the General Assembly or ICC do to address these concerns?

Response:

Future generating fuel diversity is a cause for concern because over reliance on any single fuel source can expose the utility and its customers to supply risk. However, fuel diversity should also be balanced against other concerns like reliability, price and environmental impact.

35. Are there steps the ICC or General Assembly should take to promote new and advanced technologies for electric generation, transmission, distribution, or usage? If so, please describe the steps you recommend.

Response:

No additional steps are necessary.

36. Should the ICC or General Assembly promote consolidation of the multiple electric utility control areas within Illinois? If so, please describe the steps you recommend.

Response:

This is an RTO issue.

37. Should the General Assembly modify Section 16-121 of the Public Utilities Act regarding affiliate relations or any other provision of the Act regarding affiliate relations? If so, please describe the modifications you recommend.

Response:

Illinois Power does not believe Section 16-121 of the Public Utilities Act regarding affiliate relations requires modification.

38. Should the ICC modify its affiliate rules? If so, please describe the modifications you recommend.

Response:

Illinois Power does not believe the ICC should modify its affiliate rules. If the rules were to be modified the primary change Illinois Power would recommend would be to synchronize the gas rules with the electric rules.

39. Should the General Assembly make any changes to the Public Utilities Act in response to the National Governors' Association proposal for creation of multi-state entities ("MSEs") or FERC's Standard Market Design proposal for the creation of regional-state advisory committees ("RSACs")? If so, please describe the changes you recommend.

Response:

The FERC's Standard Market Design proposal could require changes in current legislative or regulatory structures within Illinois. It would be inappropriate to make legislative changes at this time considering that the federal proposal is likely to evolve over time. At a future date it may be appropriate to make legislative changes to accommodate structures that are acceptable to state, legislative, regulatory and business interests.

40. Section 16-103(e) of the Public Utilities Act apparently limits the ICC's authority to require electric utilities to offer new tariffed services. Should this provision of the Act be changed? If so, how?

Response:

Illinois Power does not believe that Section 16-103(e) requires modification.

41. Section 16-113 of the Public Utilities Act sets forth standards for ICC declaration of a tariffed service to be a competitive service. Should this provision of the Act be changed? If so, how?

Response:

Illinois Power does not believe that Section 16-113 requires modification.